## APPENDIX "A"

### CONSTITUTION OF THE UNITED STATES

The pertinent part of the Sixth Amendment provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, * * * to be confronted with the witnesses against him * * *."

The pertinent part of the Fourteenth Amendment provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### CONSTITUTION OF WEST VIRGINIA

The pertinent parts of Sections 10 and 14 of Article 3 of the Constitution of West Virginia.

The pertinent part of Section 10, Article 3, provides:

> "No person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers."

The pertinent part of Section 14, Article 3, provides:

> "In all such trials, the accused shall be * * *, and be confronted with the witnesses against him * * *."

## APPENDIX "B"

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

This day personally appeared Goldie Moore before the undersigned authority, who after being duly qualified according to law deposes and says that she is twenty-eight years old; that she lives at Elk Two Mile, Route 6, Box 577A, Charleston, Kanawha County, West Virginia; that she knows Dominic Fazio and also knows his son Joe Fazio and also that she knew Mrs. Rosina Fazio in her lifetime, and that she also knows Robert Ballard Bailey.

Deponent further avers and says that on October 22, 1949, on Saturday afternoon, about between the hours of Five o'clock and five-thirty o'clock, P. M., that she had left her home in a car with George Rowlands, going to the A. & P. Super Market in Charleston when she reached the rock quarry, close to the Incinerator on Elk Two Mile Road, she saw a black Dodge Sedan sitting there and Mrs. Rosina Fazio was sitting in the said car and a man was sitting in the car with a striped cap, resembling a railroad cap, and the affiant definitely says that the man sitting in the car with Mrs. Rosina Fazio was not Robert Ballard Bailey.

Deponent further avers and says that she came to the A. & P. Super Market in Charleston, West Virginia, and returning to her home at the Rock Quarry where she had seen Mrs. Fazio and some man there was a green car and affiant says that she saw Joe Fazio, a son of Mrs. Rosina Fazio, sitting in the green car and that it was about six o'clock when she saw Joe Fazio sitting at the Rock Quarry in the green car, that being about the same place where Mrs. Rosina Fazio had been sitting with some man in a black Dodge Sedan, and that the black Dodge Sedan had left.

Deponent further says that she definitely knows that the man sitting in the black Dodge Sedan at the Rock

Quarry was not Robert Ballard Bailey; that his face was full and he seemed to be a fat man.,

Deponent further says that about two or three weeks ago she was at Fazio's Beer Garden or Genoa's Tavern and she was talking about the death of Mrs. Rosina Fazio with some other people and that the affiant stated to those people that Robert Ballard Bailey wasn't the man in the black car with Mrs. Fazio, but she knew that the man in the green car was Joe Fazio and at that time Dominic Fazio, the father of Joe Fazio, took from behind the counter a sickle and the said Dominic Fazio said to the affiant that she talked too much and that the case was closed, and then sometime after, that same evening when this discussion was had at the Fazio Beer place, Dominic Fazio asked the affiant to come back the next morning at ten o'clock by herself, but affiant says she did not go.

Deponent further says that about two weeks ago she was at the Fazio Beer place, together with Carlin Smith, and was discussing the case of Robert Ballard Bailey and the murder of Mrs. Rosina Fazio with Mr. Smith, and that Mr. Dominic Fazio said that he had been over on the Boulevard to buy something and that they wanted $25.00 for it, and affiant says she asked Mr. Fazio what it was and his daughter Stella Fazio walked over behind the counter and picked up a revolver or pistol and said this is what he bought. She had the gun pointed toward affiant and Mr. Smith said "Keep that thing out of my face" and she replied that it wouldn't hurt him that it was a toy. Affiant further says that she believes it was a real revolver. And affiant further says that she has not been back there since for the reason that she is afraid of bodily harm.

Deponent further says that she has known Robert Ballard Bailey for two or three years.

S/ GOLDIE MOORE.

Taken, subscribed and sworn to before me this the 22nd day of August, 1950.

My commission expires the 18th day of March, 1956.

S/ DEWEY B. JONES,
*Notary Public.*

## APPENDIX "C"

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

This day personally appeared George A. Rowlands, who after being duly qualified according to law deposes and says that he is fifty-four years old and that he lives on Elk Two Mile Route 6, Box 257, Charleston, Kanawha County, West Virginia, and that he has worked at Libbey-Owens-Ford Sheet Glass Company for eighteen years.

Affiant further says that he has known Dominic Fazio for approximately twenty years; also knows his son Joe Fazio when he sees him, and also that he has known Mrs. Rosina Fazio in her lifetime for approximately twenty years and he also knows Robert Ballard Bailey when he sees him.

Affiant further avers and says that on October 22, 1949, on Saturday afternoon, a short time before five o'clock P. M. on that date, that being the date that affiant read in the newspapers the week following on which Mrs. Rosina Fazio was injured on Elk Two Mile Road and being injured she died, and that Robert Ballard Bailey was accused of her murder, that Goldie Moore was in his car and they were going to the A. & P. Grocery Store in Charleston, and when they reached the Rock Quarry on the Elk River Two Mile Road, close to the incinerator on said road that they saw a black Dodge Sedan automobile parked on the right hand side of the road going up Elk River Two Mile Road and the said car was headed up Elk Two Mile Road, and sitting in the front seat of that parked black Dodge Sedan automobile was a woman and a man. The woman who was in the car was Mrs. Rosina Fazio sitting in the front seat with her head resting on her right shoulder, and affiant said to Goldie Moore he wondered what Mrs. Fazio was doing up Elk Two Mile and if there was anything wrong with her and also remarked

to Goldie Moore "Let's stop and see what is wrong with Mrs. Fazio" and Goldie Moore said no, there is a man with her and if there is anything wrong with her he will take care of her. The man in the car was unknown to affiant but, however, the man sitting in the front seat with Mrs. Fazio was fleshy with a large round fleshy face and wearing a railroad engineer's cap, and affiant definitely says that the man sitting in the car with Mrs. Fazio was not Robert Ballard Bailey.

Affiant further says that he has known Robert Ballard Bailey by sight for about four or five years, and affiant further says that after this incident and during the murder trial of Robert Ballard Bailey he saw Robert Ballard Bailey's picture in the paper and that the man he saw sitting in the car with Mrs. Fazio was not the same as the picture in the paper which said it was Robert Ballard Bailey.

Affiant further avers and says that when he and Goldie Moore after being at the A. & P. Store were returning to his home at the Rock Quarry where he had seen Mrs. Fazio and some man as they went down the road, that the black Dodge Car had left, but there was a green car parked on the right hand side of the road coming down, headed in the direction of Charleston, directly and opposite and across the road from where the black Dodge Sedan Automobile was parked when the affiant and Goldie Moore came to the A. & P. Store, as aforesaid. Affiant did not observe who was in the green car.

Affiant further avers and says that the first time he ever told this story was to John Bailes on August 22, 1950, excepting that a day or two after Mrs. Fazio died that he and Goldie Moore discussed it with Goldie Moore's aunt, and affiant further says that he would have related what he knew about this case as stated in this affidavit before but he was not aware it had any bearing

on the case and for this reason he had not informed any of the Bailey family.

S/ GEORGE A. ROWLANDS.

Taken, subscribed and sworn to before me this 23rd day of August, 1950.

My commission expires the 11th day of October, 1950.

S/ MALCOLM ORTH,
*Notary Public.*

## APPENDIX "D"

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

This day personally appeared Carlin Smith before the undersigned authority, who after being duly qualified according to law deposes and says that he lives at Elk Two Mile, Route 6, Charleston, Kanawha County, West Virginia.

Deponent further says that about two weeks ago he was at the Fazio Beer place, together with Goldie Moore and was discussing the case of Robert Ballard Bailey and the murder of Mrs. Rosina Fazio with Goldie Moore, and that Mr. Dominic Fazio said that he had been over on the Boulevard to buy something and that they wanted $25.00 for it, and Goldie Moore asked Mr. Fazio what it was and his daughter Stella Fazio walked over behind the counter and picked up a revolver or pistol and said this is what he bought. She had the gun pointed toward Goldie Moore and affiant said "Keep that thing out of my face" and she replied that it wouldn't hurt him it was a toy. Affiant further says that he believes it was a real revolver.

his
S/ CARLIN X SMITH.
mark

Witness to mark, D. Boone Dawson.

Taken, subscribed and sworn to before me this 22nd day of August, 1955.

My commission expires the 18th day of March, 1956.

S/ DEWEY B. JONES,
*Notary Public.*

Office-Supreme Court, U. S.
FILED
NOV 29 1950
CHARLES ELMORE CROPLEY
CLERK

NO. 391

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1950

ROBERT BALLARD BAILEY, *Petitioner*

v.

THE STATE OF WEST VIRGINIA, *Respondent*

## BRIEF OF RESPONDENT IN OPPOSITION TO ALLOWANCE OF WRIT OF CERTIORARI

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JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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